IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

OP.No. 23060 of 2002(T)

PETITIONER:

P.N.KARUNAKARAN, DEPUTY RANGAR
(RETIRED), MANNUMALIL HOUSE,
KUDAMALOOR P.O. - 686 017.

BY ADV. SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY**
   THE SECRETARY TO GOVERNMENT, FOREST AND WILD LIFE
   (B) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE CHIEF CONSERVATOR OF FORESTS,**
   THIRUVANANTHAPURAM.

3. **THE CHIEF CONSERVATOR OF FORESTS,**
   NORTHERN CIRCLE, KOLLAM REGION, KOLLAM.

4. **THE CONSERVATOR OF FORESTS, OFFICE OF**
   THE CONSERVATOR OF FORESTS, HIGH RANGE CIRCLE,
   KOTTAYAM.

5. **THE DIVISIONAL FOREST OFFICER,**
   KOTHAMANGALAM DIVISION, KOTHAMANGALAM.

6. **THE DEPUTY CONSERVATOR OF FORESTS,**
   MALAYATTOOR DIVISION, KODANAD, MALAYATTOOR.

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20 / 06 / 2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.39460/2002 IN OP. NO.23060/2002

DISMISSED

20/06/2007 **SD/- T.R.RAMACHANDRAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE LETTER OF THE 5TH RESPONDENT DT. 27.12.01 TO 2ND RESPONDENT.

EXT.P2:- COPY OF THE LETTER FROM THE ACCOUNTANT GENERAL DT. 12.9.01.

EXT.P3:- COPY OF THE LETTER DT. 16.5.02 FROM THE PETITIONER.

EXT.P4:- COPY OF THE LETTER NO.A2.5766/95 DT. 19.6.99 FROM DR. AMIT MALLICK I.P.S. TO 4TH RESPONDENT.

EXT.P5:- COPY OF THE JUDGMENT DT. 18/6/02 IN OP. NO.16341/02.

EXT.P6:- COPY OF THE LETTER DT. 22.6.02 BY THE 6TH RESPONDENT.

EXT.P7:- COPY OF THE NON LIABILITY CERTIFICATE DT. 24.7.02.

RESPONDENTS EXHIBITS

EXT.R5(a):- COPY OF THE LETTER NO. RSI. 42/02 DT. 11.1.02.

EXT.R5(b):- COPY OF THE G.O.(MS) NO.64/01/F&WLD DT. 29.10.01.

/TRUE COPY/

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T.R. RAMACHANDRAN NAIR, J.

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O.P. No. 23060 OF 2002 T
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Dated this the 20th June, 2007

J U D G M E N T

The petitioner retired from service on 31-12-2001 while working as Deputy Ranger in the Kodanad Range in Malayattoor Division. During his entire service there was no disciplinary proceeding taken against him, but still the issuance of non-liability certificate was delayed and the retirement benefits were not disbursed. It is stated by the petitioner that because of the alleged loss sustained in auction of fire wood from 1935 and 1936 T.P. Veloor in Thodupuzha Range the issuance of non-liability certificate was delayed. It is also revealed from the averments that the Divisional Forest Officer as per detailed report dated 19-6-1999 had recommended to exempt it from the category of loss. The Conservator of Forests by letter dated 23-9-1999 had also endorsed the recommendation of the D.F.O. The petitioner has produced Ext. P1 letter dated 27-12-2001 of the D.F.O. in this regard.

2. Meanwhile the petitioner had also been representing for the issuance of non-liability

certificate and release of the withheld amount. He had approached this Court earlier by filing O.P. No. 16341 of 2002 which was disposed of by Ext. P5 judgment. It was disposed of dire4cting the respondents to finalise the liability and pay admitted amount after deducting the liability so fixed and it was further directed that in case any liability is fixed against the petitioner he will be free to challenge the same. Thereafter, he received Exts. P6 and P7 whereby a non-liability certificate was issued. In Ext. P7 a total amount of Rs.2,31,995/- is shown as liability.

3. The petitioner challenges the same on various grounds. The 5th respondent has filed a counter affidavit also. It is admitted in paragraph 6 of the counter affidavit that no charge sheet was issued to the petitioner and that action was under way to get orders for the write off of the loss sustained to the Government till Ext. R5(a) order was issued by the Chief Conservator of Forests to recover the loss as per rules. This is the circumstance under which the loss was included in his liability report.

4. Ext. R5(a) shows that the same is issued by the Chief Conservator of Forests to the Divisional Forest Officer. Therein also there is no quantification of the liability and with notice to the petitioner. The circumstances under which the alleged loss is being recovered against the petitioner are not detailed in Ext. R5(a). The same is issued without any notice to the petitioner and without seeking the explanation of the petitioner. Admittedly, no disciplinary proceeding or framing of charge was made against the petitioner before retirement.

5. It is well settled that the gratuity due to a pensioner is property in his hands and the same can be deprived only under valid proceedings. It is important to notice herein that recommendations had been made by the Divisional Forest Officer and the Conservator of Forests for exempting the alleged loss from the category of loss. No worthwhile reasons are discernible from Ext. R5(a) as to why the said recommendations were not acted upon.

6. Going by the provisions of Part III, Rule 3 of

K.S.R. a pensioner is entitled for an opportunity, while alleged liability is being quantified, for objecting to the said proposal. He is entitled to know the details of the liability and also to contest the same on merits before quantification. The said rule has been violated here. Before recovering it also he is entitled to be informed. Apart from that, Ext. R5 (a) is issued by the Chief Conservator of Forests to the subordinate authority and therefore there is no discretion available to the said authority also to take a proper decision in the matter.

7. Therefore, the proceeding Ext. R5(a) is without any legal effect and Ext. P7 is accordingly quashed. There will be a direction to the competent authority among the respondents to issue appropriate notice to the petitioner giving details of the alleged loss and allow the petitioner an opportunity to submit objections to the same. If the petitioner wishes to be heard in person a personal hearing also will be granted to him. The same shall be done within a period of three months from the date of receipt of a copy of this

judgment and if the decision is in favour of the petitioner the amount withheld will be disbursed to him without any further delay. The writ petition is disposed of accordingly.

T.R. RAMACHANDRAN NAIR
JUDGE

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